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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BALDOR SPECIALTY FOODS, INC.,

**ECF CASE**

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Case No. 09 CV 2860(SHS)

Plaintiff,

**COMPLAINT**

- against -

HOULIHAN'S RESTAURANTS INC. d/b/a  
HOULIHAN'S RESTAURANT (DANBURY) and  
HOULIHAN'S RESTAURANT (POUGHKEEPSIE), 40  
GLASTONBURY RESTAURANT GROUP LLC,  
JUDITH MCCRORY, Individually and in any corporate  
capacity, RAJIB ADITYA, Individually and in any  
corporate capacity,

Defendant.

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Plaintiff, Baldor Specialty Foods, Inc. ("Baldor" or the "Plaintiff") brings this action against defendants Houlihan's Restaurant Inc. d/b/a Houlihan's Restaurant (Danbury) ("Houlihan's Danbury") and d/b/a Houlihan's Restaurant (Poughkeepsie) ("Houlihan's Poughkeepsie"), 40 Glastonbury Restuarnt Group LLC ("Glastonbury"), Judith McCrory ("Judith") and Rajib Aditya ("Rajib"). Houlihan's Danbury and Houlihan's Poughkeepsie are collectively referred to as "Houlihan's" and Houlihan's, Glastonbury, Judith and Rajib are collectively referred to as "Defendants." Plaintiff brings this action for damages and other relief, and alleges as follows:

**I. Jurisdiction**

1. Subject-matter jurisdiction is vested in this Court pursuant to the Perishable Agricultural Commodities Act ("PACA"), specifically 7 U.S.C. § 499e, and pursuant to 28 U.S.C. § 1331.

2. This Court has personal jurisdiction over the Defendants in that each of the Defendants regularly conducts or transacts business within the Southern District of New York, and that the alleged activities of the Defendants occurred within this District.

3. The Court has supplemental jurisdiction over the Plaintiff's claims arising under state law pursuant to 28 U.S.C. § 1337(a).

**II. Venue**

4. Venue in this District is based on 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in this District.

**III. Parties**

5. Plaintiff, a New York corporation, has its offices at 155 Food Center Drive, Bronx, New York, and operates its business under a valid USDA-issued PACA license, in good and active standing.

6. Plaintiff sells wholesale quantities of perishable agricultural commodities ("Produce") in interstate commerce.

7. Houlihan's is, upon information and belief, a Delaware corporation and is a purchaser of Produce in wholesale quantities and, therefore, a "dealer" pursuant to § 499a(b)(6) of PACA.

8. Upon information and belief, Houlihan's Danbury and Houlihan's Poughkeepsie have their principal places of business at 190 Goldens Bridge Court, Katonah, New York.

9. Upon information and belief, defendant Glastonbury is a Connecticut LLC with a principal place of business located at 190 Golden Bridge Court, Katonah New York. Glastonbury is made a defendant in this action because it is, upon information and belief, the parent company or a subsidiary of Houlihan's and may have been in a position to control the PACA assets.

10. Upon information and belief, Judith is, or was, an officer, director, partner, owner and/or shareholder of Houlihan's during the relevant time period. Judith is or was a person in control of, and responsible for, the disposition of Houlihan's assets, including its PACA trust assets.

11. Upon information and belief, Judith has her primary residence at 54 Indian Field Road, Greenwich, Connecticut.

12. Upon information and belief, Rajib is, or was, an officer, director, partner, owner and/or shareholder of Houlihan's during the relevant time period. Rajib is or was a person in control of, and responsible for, the disposition of Houlihan's assets, including its PACA trust assets.

13. Upon information and belief, Rajib has a principal place of business at 190 Golden Bridge Court, Katonah, New York.

**IV. Claims for Relief**

**COUNT I**

**Failure to Maintain PACA Trust**  
7 U.S.C. §§ 499e(c)(2), 499e(c)(4)

**(Against Houlihan's)**

14. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 13 as if fully set forth herein.

15. At Houlihan's request, Plaintiff sold, on credit, to Houlihan's perishable agricultural commodities. The following table sets forth the Produce delivered to Houlihan's Danbury by Plaintiff which Plaintiff has not received payment for:

<u>Plaintiff</u>	<u>Order Date</u>	<u>Commodities</u>	<u>Total Amount Sold</u>	<u>Amount Unpaid</u> <sup>1</sup>	<u>Customer</u>
Baldor Specialty Foods, Inc.	01/05/08	Fruits & vegetables and other perishable commodities	\$628.37	\$628.37	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/07/08	Fruits & vegetables and other perishable commodities	\$396.85	\$396.85	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/08/08	Fruits & vegetables and other perishable commodities	\$190.38	\$190.38	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/09/08	Fruits & vegetables and other perishable commodities	\$371.29	\$371.29	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/10/08	Fruits & vegetables and other perishable commodities	\$398.60	\$398.60	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/11/08	Fruits & vegetables and other perishable commodities	\$440.62	\$440.62	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/12/08	Fruits & vegetables and other perishable commodities	\$750.79	\$750.79	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/14/08	Fruits & vegetables and other perishable commodities	\$333.96	\$333.96	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/15/08	Fruits & vegetables and other perishable	\$408.04	\$408.04	Houlihan's Danbury

<sup>1</sup> Plus accrued interest at 2.0 per month and attorneys' fees and costs.

		commodities			
Baldor Specialty Foods, Inc.	01/16/08	Fruits & vegetables and other perishable commodities	\$281.67	\$281.67	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/17/08	Fruits & vegetables and other perishable commodities	\$322.14	\$322.14	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/18/08	Fruits & vegetables and other perishable commodities	\$603.94	\$603.94	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/19/08	Fruits & vegetables and other perishable commodities	\$610.92	\$610.92	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/21/08	Fruits & vegetables and other perishable commodities	\$435.05	\$435.05	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/22/08	Fruits & vegetables and other perishable commodities	\$240.03	\$240.03	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/23/08	Fruits & vegetables and other perishable commodities	\$378.36	\$378.36	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/24/08	Fruits & vegetables and other perishable commodities	\$206.18	\$206.18	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/25/08	Fruits & vegetables and other perishable commodities	\$327.05	\$327.05	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/26/08	Fruits & vegetables and other perishable commodities	\$853.75	\$853.75	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/28/08	Fruits & vegetables and other perishable commodities	\$77	\$77	Houlihan's Danbury

Baldor Specialty Foods, Inc.	01/29/08	Fruits & vegetables and other perishable commodities	\$350.83	\$350.83	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/30/08	Fruits & vegetables and other perishable commodities	\$266.95	\$266.95	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/31/08	Fruits & vegetables and other perishable commodities	\$14.90	\$14.90	Houlihan's Danbury
Baldor Specialty Foods, Inc.	01/31/08	Fruits & vegetables and other perishable commodities	\$229.82	\$229.82	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/01/08	Fruits & vegetables and other perishable commodities	\$252.19	\$252.19	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/02/08	Fruits & vegetables and other perishable commodities	\$743.47	\$743.47	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/04/08	Fruits & vegetables and other perishable commodities	\$220.16	\$220.16	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/05/08	Fruits & vegetables and other perishable commodities	\$79.90	\$79.90	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/06/08	Fruits & vegetables and other perishable commodities	\$144.18	\$144.18	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/07/08	Fruits & vegetables and other perishable commodities	\$143.48	\$143.48	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/08/08	Fruits & vegetables and other perishable commodities	\$341.55	\$341.55	Houlihan's Danbury
Baldor Specialty	02/09/08	Fruits & vegetables and	\$595.02	\$595.02	Houlihan's Danbury

Foods, Inc.		other perishable commodities			
Baldor Specialty Foods, Inc.	02/11/08	Fruits & vegetables and other perishable commodities	\$286.24	\$286.24	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/12/08	Fruits & vegetables and other perishable commodities	\$278.52	\$278.52	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/13/08	Fruits & vegetables and other perishable commodities	\$411.66	\$411.66	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/14/08	Fruits & vegetables and other perishable commodities	\$195.31	\$195.31	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/15/08	Fruits & vegetables and other perishable commodities	\$320.55	\$320.55	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/16/08	Fruits & vegetables and other perishable commodities	\$764.91	\$764.91	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/18/08	Fruits & vegetables and other perishable commodities	\$483.83	\$483.83	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/19/08	Fruits & vegetables and other perishable commodities	\$352.91	\$352.91	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/20/08	Fruits & vegetables and other perishable commodities	\$157.68	\$157.68	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/21/08	Fruits & vegetables and other perishable commodities	\$232.60	\$232.60	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/22/08	Fruits & vegetables and other perishable commodities	\$12.30	\$12.30	Houlihan's Danbury

Baldor Specialty Foods, Inc.	02/22/08	Fruits & vegetables and other perishable commodities	\$550.44	\$550.44	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/23/08	Fruits & vegetables and other perishable commodities	\$475.64	\$475.64	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/25/08	Fruits & vegetables and other perishable commodities	\$328.79	\$328.79	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/26/08	Fruits & vegetables and other perishable commodities	\$141.50	\$141.50	Houlihan's Danbury
Baldor Specialty Foods, Inc.	02/29/08	Fruits & vegetables and other perishable commodities	\$672.11	\$672.11	Houlihan's Danbury

Copies of the unpaid invoices are annexed hereto as Exhibit "A."

16. The following table sets forth the produce delivered by Plaintiff to Houlihan's Poughkeepsie and which Plaintiff has not received payment for:

<u>Plaintiff</u>	<u>Order Date</u>	<u>Commodities</u>	<u>Total Amount Sold</u>	<u>Amount Unpaid</u> <sup>2</sup>	<u>Customer</u>
Baldor Specialty Foods, Inc.	12/24/07	Fruits & vegetables and other perishable commodities	\$537.48	\$537.48	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	12/26/07	Fruits & vegetables and other perishable commodities	\$253.74	\$253.74	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	12/27/07	Fruits & vegetables and other perishable commodities	\$325.62	\$325.62	Houlihan's Poughkeepsie

<sup>2</sup> Plus accrued interest at 2.0 per month and attorneys' fees and costs.

Baldor Specialty Foods, Inc.	12/28/07	Fruits & vegetables and other perishable commodities	\$335.33	\$335.33	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	12/29/07	Fruits & vegetables and other perishable commodities	\$823.61	\$823.61	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	12/31/07	Fruits & vegetables and other perishable commodities	\$421.00	\$421.00	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/02/08	Fruits & vegetables and other perishable commodities	\$402.70	\$402.70	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/03/08	Fruits & vegetables and other perishable commodities	\$134.80	\$134.80	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/04/08	Fruits & vegetables and other perishable commodities	\$267.20	\$267.20	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/05/08	Fruits & vegetables and other perishable commodities	\$428.56	\$428.56	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/07/08	Fruits & vegetables and other perishable commodities	\$567.57	\$567.57	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/08/08	Fruits & vegetables and other perishable commodities	\$328.20	\$328.20	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/09/08	Fruits & vegetables and other perishable commodities	\$136.35	\$136.35	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/10/08	Fruits & vegetables and other perishable commodities	\$218.49	\$218.49	Houlihan's Poughkeepsie

Baldor Specialty Foods, Inc.	01/11/08	Fruits & vegetables and other perishable commodities	\$271.02	\$271.02	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/12/08	Fruits & vegetables and other perishable commodities	\$532.78	\$532.78	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/14/08	Fruits & vegetables and other perishable commodities	\$474.68	\$474.68	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/16/08	Fruits & vegetables and other perishable commodities	\$306.27	\$306.27	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/18/08	Fruits & vegetables and other perishable commodities	\$317.31	\$317.31	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/19/08	Fruits & vegetables and other perishable commodities	\$322.26	\$322.26	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/21/08	Fruits & vegetables and other perishable commodities	\$449.83	\$449.83	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/22/08	Fruits & vegetables and other perishable commodities	\$390.27	\$390.27	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/23/08	Fruits & vegetables and other perishable commodities	\$213.20	\$213.20	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/24/08	Fruits & vegetables and other perishable commodities	\$52.60	\$52.60	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/25/08	Fruits & vegetables and other perishable commodities	\$104.95	\$104.95	Houlihan's Poughkeepsie

Baldor Specialty Foods, Inc.	01/26/08	Fruits & vegetables and other perishable commodities	\$271.10	\$271.10	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/29/08	Fruits & vegetables and other perishable commodities	\$310.15	\$310.15	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/30/08	Fruits & vegetables and other perishable commodities	\$222.31	\$222.31	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	01/31/08	Fruits & vegetables and other perishable commodities	\$144.88	\$144.88	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/01/08	Fruits & vegetables and other perishable commodities	\$233.00	\$233.00	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/02/08	Fruits & vegetables and other perishable commodities	\$490.42	\$490.42	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/04/08	Fruits & vegetables and other perishable commodities	\$463.15	\$463.15	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/05/08	Fruits & vegetables and other perishable commodities	\$195.69	\$195.69	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/07/08	Fruits & vegetables and other perishable commodities	\$160.39	\$160.39	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/08/08	Fruits & vegetables and other perishable commodities	\$120.40	\$120.40	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/09/08	Fruits & vegetables and other perishable commodities	\$403.34	\$403.34	Houlihan's Poughkeepsie

Baldor Specialty Foods, Inc.	02/11/08	Fruits & vegetables and other perishable commodities	\$292.12	\$292.12	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/12/08	Fruits & vegetables and other perishable commodities	\$148.05	\$148.05	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/14/08	Fruits & vegetables and other perishable commodities	\$128.23	\$128.23	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/15/08	Fruits & vegetables and other perishable commodities	\$353.60	\$353.60	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/16/08	Fruits & vegetables and other perishable commodities	\$396.19	\$396.19	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/18/08	Fruits & vegetables and other perishable commodities	\$670.73	\$670.73	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/19/08	Fruits & vegetables and other perishable commodities	\$136.19	\$136.19	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/21/08	Fruits & vegetables and other perishable commodities	\$251.62	\$251.62	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/22/08	Fruits & vegetables and other perishable commodities	\$203.80	\$203.80	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/23/08	Fruits & vegetables and other perishable commodities	\$259.25	\$259.25	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/25/08	Fruits & vegetables and other perishable commodities	\$410.87	\$410.87	Houlihan's Poughkeepsie

Baldor Specialty Foods, Inc.	02/26/08	Fruits & vegetables and other perishable commodities	\$118.88	\$118.88	Houlihan's Poughkeepsie
Baldor Specialty Foods, Inc.	02/29/08	Fruits & vegetables and other perishable commodities	\$508.00	\$508.00	Houlihan's Poughkeepsie

Copies of the unpaid invoices are annexed hereto as Exhibit "B."

17. Plaintiff duly delivered the perishable agricultural commodities to Houlihan's.
18. Houlihan's received and accepted the perishable agricultural commodities from the Plaintiff.
19. Plaintiff forwarded to Houlihan's the invoices annexed hereto as Exhibits "A" and "B." The invoices, each provide a breakdown of the perishable agricultural commodities which were delivered to Houlihan's and the amounts due thereon.
20. Houlihan's received from the Plaintiff each of the invoices included in Exhibits A and B.
21. Houlihan's failed to pay for this Produce despite repeated demands from the Plaintiff.
22. Pursuant to the payment terms between Houlihan's and the Plaintiff, Houlihan's is in default with respect to the principal amount of \$32,810.61 outstanding to the Plaintiff.
23. Pursuant to the trust provisions of PACA, 7 U.S.C. § 499e(c)(2), and the Code of Federal Regulations promulgated thereunder, upon receipt of said commodities, a statutory trust arose in favor of the Plaintiff as to all commodities received by Houlihan's, all inventories of food or other products derived from said commodities, and the proceeds from the sale of such commodities until full payment is made for said commodities by Houlihan's to the Plaintiff.

24. Houlihan's has failed and refused to pay for the commodities it received and accepted from the Plaintiff, despite due demand.

25. On each of the outstanding invoices sent by the Plaintiff to Houlihan's, the Plaintiff, as a PACA licensee, placed the exact language statutorily prescribed by PACA to be placed on all invoices by a licensee to notify the buyer that a seller/supplier of perishable agricultural commodities is preserving its rights as a beneficiary to the statutory trust pursuant to 7 U.S.C. §499e(c)(4), plus pre and post judgment interest and attorney's fees. See the unpaid invoices, Ex. A and B hereto.

26. The Plaintiff is an unpaid creditor, supplier and seller of perishable agricultural commodities as those terms are defined under the PACA.

27. Upon information and belief, Houlihan's has dissipated and is continuing to dissipate the corpus of the statutory trust which arose in favor of the Plaintiff and grew upon each delivery to Houlihan's of perishable agricultural commodities.

28. The failure of Houlihan's to hold in trust for the benefit of the Plaintiff such perishable agricultural commodities received by it from the Plaintiff, and all inventories of food or other products derived from said commodities, and the proceeds from the sale of such commodities until full payment of the sums owing to the Plaintiff for said commodities, constitute violations of PACA and PACA Regulations and are unlawful, and, as a direct result the Plaintiff has suffered damages.

COUNT II

Dissipation of Trust Assets  
7 U.S.C. §§ 499b(4), 499e(c), 499e(c)(2), 499e(c)(4)

(Against Houlihan's, Glastonbury, Judith and Rajib)

29. The Plaintiff incorporates each and every allegation set forth in paragraphs 1

through 28 as if set forth fully herein.

30. Upon information and belief, proceeds obtained from the resale of the perishable agricultural commodities purchased on credit from the Plaintiff by Houlihan's, that were needed to make full payment promptly to trust beneficiaries as required by U.S.C. § 499e(c)(2), were improperly expended by Houlihan's, Glastonbury, Judith and Rajib for other purposes.

31. On each of the outstanding invoices sent by the Plaintiff to Houlihan's, the Plaintiff, as PACA licensee, placed the exact language statutorily prescribed by PACA to be placed on all invoices by a licensee to notify the buyer that a seller/supplier of perishable agricultural commodities is preserving its rights as a beneficiary to the statutory trust pursuant to 7 U.S.C. § 499c(c)(4), plus interest and attorneys' fees. *See the Invoices, annexed hereto as Exhibits A and B.*

32. Upon information and belief, Defendants received funds subject to the trust arising under 7 U.S.C. § 499e(c), which should have been used to pay the Plaintiff's outstanding invoices, but were not.

33. As a direct result of the dissipation of trust assets by Houlihan's, Glastonbury, Judith and Rajib, the Plaintiff has suffered damages.

**COUNT III**

**Failure to Pay Trust Funds**  
**7 U.S.C. §§ 499b(4)**

(Against Houlihan's)

34. The Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 33 as if set forth fully herein.

35. Houlihan's has failed and refuses to pay the Plaintiff \$32,810.61 from the

PACA trust, which sum is unpaid and overdue to the Plaintiff for the perishable agricultural commodities received and accepted by Houlihan's from Plaintiff.

36. The failure of Houlihan's to make said payments to the Plaintiff from the statutory trust fund is a violation of PACA 7 U.S.C. § 499b and PACA Regulations and is in breach of Houlihan's fiduciary duty as trustee, and, as a direct result, the Plaintiff has suffered damages.

**COUNT IV**

**Breach of Fiduciary Duty / Non-Dischargeability**  
7 U.S.C. §§ 499b(4), 11 U.S.C. 523(a)

(Against Houlihan's, Glastonbury, Judith and Rajib)

37. The Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 36 as if set forth fully herein.

38. Upon information and belief, from December 2007 through February 2008, and at all relevant times thereafter, Glastonbury, Judith and Rajib managed, controlled and directed the credit purchase of perishable agricultural commodities from the Plaintiff on behalf of Houlihan's.

39. Upon information and belief, Defendants received, in the regular course of business, funds subject to the PACA statutory trust which were not used for the payment of the outstanding invoices for the Plaintiff.

40. Upon information and belief, Defendants, in breach of their fiduciary obligations arising under PACA, directed the disbursement of trust funds for purposes other than making full and prompt payment to the Plaintiff as required by PACA, 7 U.S.C. § 499b(4), thereby heightening liability herein to a state of non-dischargeability pursuant to 11 U.S.C. § 523(a).

41. As a direct result of the foregoing, Houlihan's, Glastonbury, Judith and Rajib have violated their fiduciary duties as trustees in failing and refusing to make the payments required to satisfy the priority trust interests of the Plaintiff, and, as a direct result, the Plaintiff has suffered damages.

**COUNT V**

**Breach of Contract / Action on Account**

**(Against Houlihan's, Glastonbury, Judith and Rajib)**

42. The Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 41 as if set forth fully herein.

43. From December 2007 through February 2008, Houlihan's contracted with the Plaintiff to purchase fresh fruits and vegetables on credit. *See Ex. A and B.*

44. Pursuant to the payment terms between the Plaintiff and Houlihan's, Houlihan's is in default as to the Plaintiff on the amounts unpaid and outstanding.

45. Houlihan's breached the contract by failing and refusing to pay the Plaintiff \$32,810.61. As a direct result, the Plaintiff has suffered damages.

**COUNT VI**

**Interest and Attorney's Fees**

**(Against Houlihan's, Glastonbury, Judith and Rajib)**

46. The Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 45 as if set forth fully herein.

47. Pursuant to PACA, 7 U.S.C. § 499c(c), and the Regulations promulgated

thereunder, Defendants were statutorily required to maintain a trust in favor of the Plaintiff in order to make full payment to the Plaintiff of said amount, \$32,810.61.

48. As a result of the failure of Defendants to maintain the trust and to make full payment promptly, the Plaintiff has been required to pay attorneys' fees and costs in order to bring this action to compel payment of the trust res.

49. As a result of the failure of Defendants to comply with their statutorily mandated duties to maintain the trust and make full payment promptly, the Plaintiff has lost the use of said money.

50. The Plaintiff will not receive full payment as required by PACA, 7 U.S.C. § 499e(c), if the Plaintiff must expend part of said payment on attorneys' fees, and litigation costs, and also suffer the loss of interest on the outstanding amounts owed, all because of violations by Defendants of their statutory duties to maintain the trust and make full payment promptly.

51. In addition to the above recitals, the Plaintiff maintains express claims for interest and attorneys' fees based upon the terms listed on each invoice, as between merchants, which were all bargained terms of the contract and are sums owing in connection with the produce transaction. Interest and attorneys' fees accrue at the rate of 24% per annum pursuant to the invoices.

COUNT VII

Creation of Common Fund

(Against All Defendants)

52. The Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 51 as if set forth fully herein.

53. The Plaintiff is commencing this lawsuit on behalf of itself and other similarly

situated PACA trust creditors, and any and all monies recovered from Defendants and other third parties will be distributed on a pro-rata basis among the Plaintiff and all perfected PACA trust creditors joined to this lawsuit.

**PRAYER**

**WHEREFORE**, the Plaintiff prays that this Court issue an Order:

1. Granting judgment in favor of the Plaintiff and against each of the Defendants, jointly and severally, in the principal amount of \$32,810.61, together with pre-judgment interest and post-judgment interest, attorneys' fees and the costs of this action;
2. Declaring and directing the Defendants to establish and/or preserve a trust fund consisting of funds sufficient to pay the Plaintiff's principal trust claim of \$32,810.61 plus pre-judgment interest, attorneys' fees and costs;
3. Preliminarily enjoining, until the entry of the relief herein requested and compliance therewith, Defendants and their agents, employees and representatives from, in any way, directly or indirectly, transferring, assigning or otherwise disposing of the above-described trust fund, or any interest therein, in whole or in part, absolutely or as security;
4. Declaring and directing Defendants to disgorge, assign, transfer, deliver and turn over to the Plaintiff as much of the above-described trust fund as is necessary to fully compensate to the Plaintiff for the damages it has suffered and continues to suffer;
5. Granting the Plaintiff reasonable costs and expenses, including attorney's fees in this action; and

6. Such other and further relief; whether in law or in equity, as this Court deems just and proper.

Dated: New York, New York  
March 24, 2009

Respectfully submitted,

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By 

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